

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BASSAM AHMED MOHAMED AHMED,

Plaintiff,

v.

UR M. JADDOU, *et al.*,

Defendants.

Case No. [23-cv-04259-SI](#)

**ORDER GRANTING DEFENDANTS’  
PARTIAL MOTION TO DISMISS  
PLAINTIFF’S FIRST AMENDED  
COMPLAINT**

Re: Dkt. Nos. 18, 20

Defendants’ partial motion to dismiss is scheduled for a hearing on March 8, 2024. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matter is appropriate for resolution without oral argument and VACATES the hearing. For the reasons set forth below, the Court GRANTS the motion.

**BACKGROUND<sup>1</sup>**

Plaintiff Bassam Ahmed Mohamed Ahmed brings this civil action against defendants Ur Jaddou, Alejandro Mayorkas, United States Citizenship and Immigration Services (“USCIS”), Antony Blinken, and United States Department of State (“DOS”), seeking a declaration of United States citizenship and issuance of a United States passport. First Amended Compl. (“FAC”) (Dkt. No. 17).

Defendant USCIS is “the agency responsible for the administration and adjudication of immigration benefits and services including, but not limited to, the instant N-600 application.” *Id.*

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<sup>1</sup> Factual allegations are taken from the First Amended Complaint and are assumed true for the purposes of a Motion to Dismiss. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).

¶ 17. Defendant Ur Jaddou is the Director of the USCIS and is “generally charged with the overall administration of benefits and immigration services including the adjudication of N-600 [a]pplications.” *Id.* ¶ 15. Defendant Alejandro Mayorkas is the Secretary and “head” of the Department of Homeland Security and is “charged with the administration of the [USCIS] and implementation of the Immigration and Nationality Act.” *Id.* ¶ 16. Plaintiff further alleges that defendant Mayorkas has “ultimate decision-making authority over all matters relating to the adjudication of N-600 [applications].” *Id.* Defendant Anthony Blinken is the United States Secretary of State and is “generally charged with the overall management and administration of the issuance of passports.” *Id.* ¶ 18. Defendant United States Department of State (“DOS”) is “the [a]gency responsible for managing and administering the issuance of passports.” *Id.* ¶ 19.

Plaintiff entered the United States with a visitor visa on January 8, 2012, and submitted his Form N-600 Application for Certificate of Citizenship to USCIS on August 3, 2012. *Id.* ¶¶ 31-32. On July 24, 2015, USCIS denied plaintiff’s application because he had not established his relationship to Ahmed Mohamed Ahmed, his alleged father, although Ahmed Mohamed Ahmed had fulfilled the requisite ten years of physical presence prior to plaintiff’s birth. ¶ 33. Plaintiff filed an appeal of his N-600 denial on August 20, 2015, and in the meantime received his United States passport from the Los Angeles Passport Agency on February 12, 2016. *Id.* ¶¶ 34-35.

On December 9, 2020, USCIS reopened and remanded plaintiff’s N-600 application for review in light of plaintiff’s issued passport. *Id.* ¶ 37. Through 2021, plaintiff submitted “numerous inquiries” to USCIS to follow up on the status of his case. *Id.* ¶ 38. On November 15, 2021, plaintiff advised USCIS that he was preparing to file a writ of mandamus to compel adjudication of his N-600 application. *Id.* ¶ 39. On December 23, 2021, plaintiff attended an interview regarding his N-600 application, and on January 3, 2022, a DNA testing company submitted the DNA testing of plaintiff and his alleged siblings, Mohamed Ahmed Mohamed Ahmed and Rafiq Ahmed Mohamed Ahmed, to USCIS. *Id.* ¶¶ 40-42.

On January 18, 2022, plaintiff received a Notice of Passport Revocation from DOS, which stated:

A review of your father’s and half brother Rafi[q]’s immigration and

passport records show that your parents Ahmed Mohamed Ahmed and Fatima Sabran Kassem Dahwan were married in 1982 instead of 1968 . . . Evidence indicates that your parents were also previously married to other individuals, Fatima Ahmed Ali<sup>2</sup> your father's first wife (Rafi[q]'s mother) and Mohamed Nasher Salem your mother's first husband . . . DNA results show that you are 99.99% related to your half brother Rafi[q] Ahmed who based on his immigration and passport records has a different biological mother (Fatima Ahmed Ali) than you and was legally adopted by your father Ahmed Mohamed Ahmed in 1982.

*Id.* ¶¶ 43-46. Plaintiff alleges that Rafiq Ahmed Mohamed Ahmed is the biological child of Ahmed Mohamed Ahmed and Fatima Ahmed Saleh, not an adoptee. *Id.* ¶¶ 47. Plaintiff further alleges that the passport revocation does not acknowledge the full sibling match between plaintiff and Mohamed Ahmed Mohamed Ahmed, another biological child of Ahmed Mohamed Ahmed and Fatima Ahmed Saleh. *Id.* ¶ 49. According to plaintiff, because Mohamed Ahmed Mohamed Ahmed and Rafiq Ahmed Mohamed Ahmed are the biological children of Ahmed Mohamed Ahmed and Fatima Ahmed Saleh, "a full sibling match with [p]laintiff evinces they share the same father and mother."<sup>3</sup> *Id.* ¶ 50. Further, because "citizenship is passed through and by the father in this case, the biological mother has no bearing . . . since Ahmed Mohamed Ahmed was legally married to both wives, regardless of which wife is mother," thus "[p]laintiff was a child born in wedlock." *Id.* ¶ 51.

On September 29, 2023, USCIS issued a denial of plaintiff's N-600 application, stating that the DNA testing found plaintiff to be the "full" sibling of Mohamed Ahmed Mohamed Ahmed and Rafiq Ahmed Mohamed Ahmed but did not establish Ahmed Mohamed Ahmed to be plaintiff's father. *Id.* ¶¶ 53, 56. USCIS reasoned that plaintiff did not include the birth certificates of his alleged full siblings but acknowledged that plaintiff provided their Certificates of Citizenship (both Mohamed Ahmed Mohamed Ahmed and Rafiq Ahmed Mohamed Ahmed acquired United States citizenship from Ahmed Mohamed Ahmed). *Id.* ¶¶ 57-58. USCIS also stated that plaintiff did not

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<sup>2</sup> In his complaint, plaintiff refers to Ahmed Mohamed Ahmed's first wife as "Fatima Ahmed Saleh" but the Notice of Passport Revocation refers to her as "Fatima Ahmed Ali." *See id.* ¶¶ 23, 45; Notice of Passport Revocation, Ex. HH. It is unclear whether Fatima Ahmed Saleh and Fatima Ahmed Ali both refer to Ahmed Mohamed Ahmed's first wife.

<sup>3</sup> The parties disagree as to plaintiff's biological relationship with Rafiq Ahmed Mohamed Ahmed and Mohamed Ahmed Mohamed Ahmed. Plaintiff alleges that he is their "full sibling" but the Notice of Passport Revocation states that plaintiff is the "half brother" of Rafiq Ahmed Mohamed Ahmed with "99.99% relat[ion]" and does not address plaintiff's relationship with Mohamed Ahmed Mohamed Ahmed. *Id.* ¶¶ 46, 49, 60.

1 establish that he was “legitimated” by Ahmed Mohamed Ahmed. *Id.* ¶ 61.

2 Plaintiff’s first amended complaint asserts the following causes of action: (1) Administrative  
3 Procedure Act (“APA”), 5 U.S.C. § 706, as to all defendants, seeking a declaration of United States  
4 citizenship, issuance of a United States passport, an injunction enjoining defendants from revoking  
5 or refusing to renew plaintiff’s passport on the basis of non-nationality, and re-adjudication of  
6 plaintiff’s N-600 application; (2) Immigration and Nationality Act, 8 U.S.C. § 1503, as to defendants  
7 Jaddou, Mayorkas, and Blinken, seeking a declaration of United States citizenship; and (3)  
8 Declaratory Judgment Act, 28 U.S.C. § 2201, as to all defendants, seeking a declaration of United  
9 States citizenship and a declaration that defendants acted arbitrarily and capriciously in failing to  
10 recognize plaintiff’s United States citizenship. *Id.*

## 11 12 **LEGAL STANDARD**

13 Federal Rule of Civil Procedure 12(b)(1) allows a party to challenge a federal court’s  
14 jurisdiction over the subject matter of the complaint. As the party invoking the jurisdiction of the  
15 federal court, the plaintiff bears the burden of establishing that the court has the requisite subject  
16 matter jurisdiction to grant the relief requested. *See Kokkonen v. Guardian Life Ins. Co. of America*,  
17 511 U.S. 375, 377 (1994) (internal citations omitted). A complaint will be dismissed if, looking at  
18 the complaint as a whole, it appears to lack federal jurisdiction either “facially” or “factually.”  
19 *Thornhill Publ’g Co., Inc. v. General Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979); *Safe*  
20 *Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). When the complaint is challenged  
21 for lack of subject matter jurisdiction on its face, all material allegations in the complaint will be  
22 taken as true and construed in the light most favorable to the plaintiff. *NL Indus. v. Kaplan*, 792  
23 F.2d 896, 898 (9th Cir. 1986).

## 24 25 **DISCUSSION**

26 The parties disagree on whether the Court has subject matter jurisdiction over plaintiff’s  
27 APA claim, or alternatively, whether plaintiff fails to state a claim under the APA. The parties  
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further disagree on whether plaintiff's request for injunctive relief is proper,<sup>4</sup> and whether the USCIS and DOS are proper defendants.

### **I. APA**

Section 706 of the APA permits a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706. Plaintiff claims that defendants acted arbitrarily and improperly in "approving and then revoking" plaintiff's passport and denying plaintiff's N-600 application despite "clear DNA evidence" that plaintiff is the "full biological match to the siblings who previously obtained citizenship through their father," Ahmed Mohamed Ahmed. FAC ¶¶ 99-102.

Defendants move to dismiss plaintiff's APA claim for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), or alternatively, failure to state a claim pursuant to Rule 12(b)(6). Defendants contend that plaintiff's second cause of action pursuant to 8 U.S.C. § 1503(a) provides an adequate remedy and therefore precludes simultaneous review under the APA. Plaintiff responds that "[c]ases where the sole issue is a passport revocation on the basis of non-nationality may preclude simultaneous review" but an APA claim may stand "where there is a separate basis." Dkt. No. 20 at 5. Plaintiff argues that his APA claim offers an "adequate measure" to address the "separate" claims regarding the "process, policies and procedures employed by [d]efendants," for which a declaration of citizenship pursuant to 8 U.S.C. § 1503(a) "does not provide an adequate remedy." *Id.* at 5-6.

Section 704 of the APA limits judicial review to agency actions "for which there is no other adequate remedy in a court." In enacting the statute, "Congress did not intend the general grant of

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<sup>4</sup> Defendants move to dismiss plaintiff's "claim for injunctive relief in Count Three," citing paragraphs 116-120 of the FAC. Dkt. No. 18 at 7. However, paragraphs 116-120 of the FAC pertain to Count Two, and Count Three is brought under the Declaratory Judgment Act and does not seek injunctive relief. Plaintiff states in his opposition brief that he does not seek injunctive relief in Count Two, although plaintiff requests "immediate issuance of his United States passport and Certificate of Citizenship" under Count Two in the FAC. Dkt. No. 20 at 7; FAC ¶ 122. Plaintiff's prayer for relief does seek various forms of injunctive relief, and the Court will evaluate whether plaintiff is entitled to seek injunctive relief.

review in the APA to duplicate existing procedures for review of agency action.” *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988); *see also Cent. Platte Nat. Res. Dist. v. U.S. Dep’t of Agric.*, 643 F.3d 1142, 1148 (8th Cir. 2011) (“A party may advance an APA claim as well as another type of claim only if the APA claim does not duplicate existing procedures for review of an agency action”) (internal citation and quotation marks omitted). Under 8 U.S.C. § 1503(a), a plaintiff is entitled to a *de novo* review of denial of any “right or privilege” of citizenship, including passport revocations and denials of N-600 applications. *See Moncada v. Pompeo*, Case No. 2:19-cv-01293-AB-AGR<sub>x</sub>, 2020 WL 1079301, at \*3 (C.D. Cal. Feb. 3, 2020) (dismissing plaintiff’s APA claim regarding his passport revocation because 8 U.S.C. § 1503(a) provides an adequate remedy in court) (citing *Washington Toxics Coal. v. EPA*, 413 F.3d 1024, 1034 (9th Cir. 2005), *abrogated on other grounds*); *Harris v. Dep’t of Homeland Sec.*, 18 F. Supp. 3d 1349, 1359 (S.D. Fla. 2014), *as amended* (May 8, 2014) (dismissing plaintiff’s APA claim regarding the denial of his N-600 application because “special statutory-review proceedings under § 1503(a) already exist”).

Here, all of the relief sought in the FAC relates to plaintiff’s request for a declaration of U.S. citizenship and the reissuance of his U.S. passport. Although the FAC includes “Background Information Regarding the Government’s Policy of Stymying Yemeni Migration to the United States,” the APA cause of action does not include any challenge to those policies. In addition, plaintiff’s reliance on *Saleh v. Pompeo*, 393 F. Supp. 3d 172, 180 (E.D.N.Y. 2019), is misplaced. In that case, the court held that the plaintiff could bring a claim under the APA regarding the revocation of his passport because, under the facts of that case, “Saleh may not bring a claim under 8 U.S.C. § 1503(a), and there are no alternative avenues for judicial review.” *Saleh*, 393 F. Supp. 3d at 181. Here, there is no dispute that plaintiff may seek relief regarding his passport revocation and the denial of his N-600 application under the second cause of action. Thus, the Court agrees with defendants that 8 U.S.C. § 1503(a) provides an adequate remedy and dismisses plaintiff’s APA claim for lack of subject matter jurisdiction pursuant to Rule 12(b)(1).

## II. Injunctive Relief

In his Prayer for Relief, plaintiff seeks an injunction ordering defendants to re-issue him a

United States passport, enjoining defendants from revoking or refusing to renew his passport on the basis of non-nationality, and the adjudication of his N-600 application. *See* FAC Prayer for Relief. Defendants contend that plaintiff is not entitled to injunctive relief because 8 U.S.C. § 1503(a) provides only for a declaration of citizenship.<sup>5</sup> Plaintiff's opposition brief clarifies that his request for injunctive relief "relates to his cause of action under the APA." Dkt. No. 20 at 7. Because the Court has dismissed plaintiff's APA claim, the Court strikes plaintiff's requests for injunctive relief in the Prayer for Relief.

### III. Improper Defendants


Plaintiff's cause of action under 8 U.S.C. § 1503(a) is properly brought only against the individual defendants Jaddou, Mayorkas, and Blinken. The APA and Declaratory Judgment claims are alleged against the individual and agency defendants. Because the Court has dismissed the APA claim, the Court finds it appropriate to dismiss the agency defendants from plaintiff's cause of action under the Declaratory Judgment Act because 28 U.S.C. § 2201 "[does] not enlarge[] the jurisdiction of the courts over subject matter and parties." *Benson v. State Bd. of Parole & Prob.*, 384 F.2d 238, 239 n.4 (9th Cir. 1967), *cert. denied*, 391 U.S. 954 (1968). Accordingly, the USCIS and DOS are dismissed as defendants for lack of subject matter jurisdiction.

### CONCLUSION

For the foregoing reasons and for good cause shown, the Court hereby GRANTS in its entirety defendants' partial motion to dismiss plaintiff's cause of action under the APA, plaintiff's request for injunctive relief, and defendants USCIS and DOS.

### IT IS SO ORDERED.

Dated: March 5, 2024

  
SUSAN ILLSTON  
United States District Judge

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<sup>5</sup> Under 8 U.S.C. § 1503(a), a person who claims a right or privilege as a national of the United States and is denied such right or privilege "may institute an action under the provisions of section 2201 of Title 28 . . . for a judgment declaring him to be a national of the United States."